



## ***Texas Department of Insurance***

### ***Division of Workers' Compensation***

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

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## ***MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION***

### ***GENERAL INFORMATION***

#### **Requestor Name and Address**

COLLEGE STATION MEDICAL CENTER  
3200 SW FREEWAY SUITE 2200  
HOUSTON TX 77027

#### **Carrier's Austin Representative Box**

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#### **MFDR Date Received**

APRIL 3, 2008

#### **Respondent Name**

AMERICAN GUARANTEE & LIABILITY

#### **MFDR Tracking Number**

M4-08-5000-01

### ***REQUESTOR'S POSITION SUMMARY***

**Requestor's Position Summary Dated April 2, 2008:** "The amount paid by the carrier falls below the expected reimbursement rate under the Acute Care Inpatient Hospital Fee Guideline (ACIHFG) found in Commission Rule 134.401. Memorial Hermann Hospital's usual and customary charges exceeded the stop loss reimbursement level contained in the ACIHFG and should have been reimbursed at 75% of the total billed charges....In this case, the hospital's usual and customary charges for room and board, ancillary services, drug charges and implants amounted to \$72,419.25, and exceeded the stop loss threshold found in the Acute Care Inpatient Hospital Fee Guideline, Rule 134.401(c)(6)." "Because the hospital's usual and customary charges exceeded the stop loss threshold, payment should have been made at 75% of total charges."

**Amount in Dispute:** \$92,091.39

### ***RESPONDENT'S POSITION SUMMARY***

**Respondent's Position Summary Dated April 22, 2008:** "Requestor billed a total of \$128,569.85. The Requestor asserts it is entitled to reimbursement in the amount of \$96,427.39, which is 75% of the total charges. Requestor has not shown entitlement to this alternative, exceptional method of calculating reimbursement and has not otherwise properly calculated the audited charges."

**Response Submitted by:** Flahive, Ogden & Latson

**Respondent's Supplemental Position Summary Dated April 25, 2008:** "Carrier requests the Division order a refund under authority of one or more of the following: Texas Labor Code §§ 413.016(a), 413.019(b), 413.031(a)(3) and 408.0271; 27 TAC §§ 133.260, 133.305(a)(4)(C), 134.800(f)(repealed) and 133.304(repealed)."

**Response Submitted by:** Flahive, Ogden & Latson

**Respondent's Supplemental Position Summary Dated September 8, 2011:** "Respondent submits this Respondent's Post-Appeal Supplemental Response as a response to and incorporation of the Third Court of Appeals Mandate in Cause No. 03-07-00682-CV...Based upon Respondent's initial and all supplemental responses, and in accordance with the Division's obligation to adjudicate the payment, in accordance with the Labor Code and Division rules, Requestor has failed to sustain its burden of proving entitlement to the stop-loss

exception. The Division must conclude that payment should be awarded in accordance with the general *per diem* payment in accordance with 28 Texas Administrative Code §134.401 (repealed)..."

**Response Submitted by:** Flahive, Ogden & Latson, 505 West 12<sup>th</sup> Street, Austin, Texas 78701

### ***SUMMARY OF FINDINGS***

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
May 30, 2007 through June 1, 2007	Inpatient Hospital Services	\$92,091.39	\$0.00

### ***FINDINGS AND DECISION***

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

#### **Background**

1. 28 Texas Administrative Code §133.305 and §133.307, 31 *Texas Register* 10314, applicable to requests filed on or after January 15, 2007, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.
3. 28 Texas Administrative Code §134.1, 31 *Texas Register* 3561, effective May 2, 2006, sets out the guidelines for a fair and reasonable amount of reimbursement in the absence of a contract or an applicable division fee guideline.
4. 28 Texas Administrative Code §133.260, 31 *Texas Register* 3544, effective May 2, 2006, sets out the procedure for insurance carriers to request refunds.

The services in dispute were reduced/denied by the respondent with the following reason codes:

#### **Explanation of Benefits**

- 97-Payment is included in the allowance for another service/procedure.
- 226-Included in global charge.
- 16-Claim/service lacks information which is needed for adjudication. Additional information is supplied using remittance advice remarks codes whenever appropriate.
- 253-In order to review this charge we will need a copy of the invoice.

#### **Issues**

1. Did the audited charges exceed \$40,000.00?
2. Did the admission in dispute involve unusually extensive services?
3. Did the admission in dispute involve unusually costly services?
4. Is the requestor entitled to additional reimbursement?
5. Is the respondent entitled to an order or reimbursement or refund?

#### **Findings**

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 Texas Register 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 South Western Reporter Third 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services." Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission,

position or response as applicable. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually extensive; and whether the admission and disputed services **in this case** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that "Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection..." 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states "...to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold." Furthermore, (A) (v) of that same section states "...Audited charges are those charges which remain after a bill review by the insurance carrier has been performed..." Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal \$128,569.85. The Division concludes that the total audited charges exceed \$40,000.
2. 28 Texas Administrative Code §134.401(c)(2)(C) allows for payment under the stop-loss exception on a case-by-case basis only if the particular case exceeds the stop-loss threshold as described in paragraph (6). Paragraph (6)(A)(ii) states that "This stop-loss threshold is established to ensure compensation for unusually extensive services required during an admission." The Third Court of Appeals' November 13, 2008 opinion states that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services" and further states that "...independent reimbursement under the Stop-Loss Exception was meant to apply on a case-by-case basis in relatively few cases." The requestor in its original position statement states that "The amount paid by the carrier falls below the expected reimbursement rate under the Acute Care Inpatient Hospital Fee Guideline (ACIHFG) found in Commission Rule 134.401. Memorial Hermann Hospital's usual and customary charges exceeded the stop loss reimbursement level contained in the ACIHFG and should have been reimbursed at 75% of the total billed charges....In this case, the hospital's usual and customary charges for room and board, ancillary services, drug charges and implants amounted to \$128,569.85, and exceeded the stop loss threshold found in the Acute Care Inpatient Hospital Fee Guideline, Rule 134.401(c)(6)." "Because the hospital's usual and customary charges exceeded the stop loss threshold, payment should have been made at 75% of total charges." This position does not meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C) because the requestor presumes that the disputed services meet Stop-Loss, thereby presuming that the admission was unusually extensive. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(2)(C).
3. 28 Texas Administrative Code §134.401(c)(6) states that "Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker." The Third Court of Appeals' November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must demonstrate that an admission involved unusually costly services. Neither the requestor's position statements, nor the affidavits provided demonstrate how this inpatient admission was unusually costly. The requestor does not provide a reasonable comparison between the cost associated with this admission when compared to similar spinal surgery services or admissions, thereby failing to demonstrate that the admission in dispute was unusually costly. The division concludes that the requestor failed to meet the requirements of 28 Texas Administrative Code §134.401(c)(6).
4. For the reasons stated above the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements*. The Division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.
  - Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of \$1,118.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that "The applicable Workers' Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission..." The length of stay was two days. The surgical per diem rate of \$1,118.00 multiplied by the length of stay of two days results in an allowable amount of \$2,236.00.
  - 28 Texas Administrative Code §134.401(c)(4)(A), states "When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274)."
  - A review of the submitted medical bill indicates that the requestor billed revenue code 278 for Implants at

\$87,560.00.

- Review of the medical documentation provided finds that although the requestor billed items under revenue code 278, no invoices were found to support the cost of the implantables billed. For that reason, no additional reimbursement can be recommended.
  - 28 Texas Administrative Code §134.401(c)(4)(B) allows that “When medically necessary the following services indicated by revenue codes shall be reimbursed at a fair and reasonable rate: (iv) Blood (revenue codes 380-399).” A review of the submitted hospital bill finds that the requestor billed \$1,560.00 for revenue code 390-Blood/Storage Processing and \$1,240.00 for revenue code 391-Blood Administration. 28 Texas Administrative Code §133.307(g)(3)(D), requires the requestor to provide “documentation that discusses, demonstrates, and justifies that the payment amount being sought is a fair and reasonable rate of reimbursement.” Review of the submitted documentation finds that the requestor does not demonstrate or justify that the amount sought for revenue codes 390 and 391 would be a fair and reasonable rate of reimbursement. Additional payment cannot be recommended.
5. In its April 25, 2008 response to the request for medical fee dispute resolution, the respondent wrote “Carrier requests the Division order a refund under authority of one or more of the following: Texas Labor Code §§ 413.016(a), 413.019(b), 413.031(a)(3) and 408.0271; 27 TAC §§ 133.260, 133.305(a)(4)(C), 134.800(f)(repealed) and 133.304(repealed).” Texas Labor Code §408.0271 states, in pertinent part:
- (a) If the health care services provided to an injured employee are determined by the carrier to be **inappropriate** [emphasis added], the insurance carrier shall:
    - (1) notify the health care provider **in writing** of the carrier’s decision; and
    - (2) demand a refund by the health care provider of the **portion of payment** [emphasis added] on the claim that was received by the health care provider for the inappropriate services.”

Review of the documentation submitted finds that the respondent has not identified the “inappropriate” services, nor has it demonstrated the health care provider was notified in writing of its demand for a specific (dollar amount) refund prior to the medical fee dispute being filed.

Furthermore, applicable 28 TAC §133.260, 31 *Texas Register* 3544, effective May 2, 2006, provided, in pertinent part, that:

- (b) An insurance carrier shall request a refund within 240 days from the date of service or 30 days from completion of an audit performed in accordance with §133.230 (relating to Insurance Carrier Audit of a Medical Bill), whichever is later, when it determines that inappropriate health care was previously reimbursed, or when an overpayment was made for health care provided.
- (c) The insurance carrier shall submit the refund request to the health care provider in an explanation of benefits in the form and manner prescribed by the Division.

Review of the documentation provided by the respondent finds that the insurance carrier did not present a refund request to the health care provider within the time-frame specified, nor did the carrier submit any refund request to the health care provider in an explanation of benefits as required. The division concludes that the insurance carrier has not met the requirements of either Texas Labor Code §408.0271, nor has it met the requirements of applicable 28 TAC §133.260. For those reasons, the respondent’s request for an order of reimbursement is not proper, and is not supported. An order of reimbursement for the respondent is therefore not recommended.

The division concludes that the total allowable for this admission is \$2,236.00. The respondent issued payment in the amount of \$<amount>. Based upon the documentation submitted no additional reimbursement can be recommended.

## **Conclusion**

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed \$40,000, but failed to demonstrate that the disputed inpatient hospital admission involved unusually extensive services, and failed to demonstrate that the services in dispute were unusually costly. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount*, and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in no additional reimbursement.

## ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 additional reimbursement for the services in dispute.

### Authorized Signature

_____ Signature	_____ Medical Fee Dispute Resolution Officer	_____ 11/30/2012 Date
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_____ Signature	_____ Medical Fee Dispute Resolution Manager	_____ 11/30/2012 Date
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### ***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a *certificate of service demonstrating that the request has been sent to the other party.***

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**